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HOUSE BILL 5

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2007

INTRODUCED BY

Al Park

AN ACT

RELATING TO DOMESTIC VIOLENCE; INCREASING PENALTIES FOR BATTERY AGAINST A HOUSEHOLD MEMBER AND AGGRAVATED BATTERY AGAINST A HOUSEHOLD MEMBER; REQUIRING OFFENDERS TO PARTICIPATE IN AND COMPLETE A DOMESTIC VIOLENCE OFFENDER TREATMENT PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3-15 NMSA 1978 (being Laws 1995, Chapter 221, Section 6, as amended) is amended to read:

"30-3-15. BATTERY AGAINST A HOUSEHOLD MEMBER.--

A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

B. Whoever commits battery against a household member is:

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 (1) for a first offense, guilty of a
2 misdemeanor;

3 (2) for a second offense against the same
4 victim, guilty of a misdemeanor and, as part of the sentence,
5 shall be imprisoned for a term of at least forty-eight hours
6 that shall not be suspended, deferred or taken under
7 advisement;

8 (3) for a third offense against the same
9 victim, guilty of a misdemeanor and, as part of the sentence,
10 shall be imprisoned for a term of at least thirty days that
11 shall not be suspended, deferred or taken under advisement; or

12 (4) for a fourth or subsequent offense against
13 the same victim, guilty of a fourth degree felony and, as part
14 of the sentence, shall be imprisoned for a term of at least six
15 months that shall not be suspended, deferred or taken under
16 advisement.

17 C. Upon conviction pursuant to this section, an
18 offender shall be required to participate in and complete a
19 domestic violence offender treatment program approved by the
20 children, youth and families department pursuant to rules
21 promulgated by the department that define the criteria for such
22 programs. The requirement imposed pursuant to this subsection
23 shall not be suspended, deferred or taken under advisement.

24 D. Notwithstanding any provision of law to the
25 contrary, if an offender's sentence was suspended or deferred

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underscored material = new
[bracketed material] = delete

1 in whole or in part, the period of probation may extend beyond
2 three hundred sixty-four days but shall not exceed two years.
3 If an offender violates a condition of probation, the court may
4 impose any sentence that the court could originally have
5 imposed and credit shall not be given for time served by the
6 offender on probation; provided that the total period of
7 incarceration shall not exceed three hundred sixty-four days
8 and the combined period of incarceration and probation shall
9 not exceed two years."

10 Section 2. Section 30-3-16 NMSA 1978 (being Laws 1995,
11 Chapter 221, Section 7) is amended to read:

12 "30-3-16. AGGRAVATED BATTERY AGAINST A HOUSEHOLD
13 MEMBER.--

14 A. Aggravated battery against a household member
15 consists of the unlawful touching or application of force to
16 the person of a household member with intent to injure that
17 person or another.

18 B. Whoever commits aggravated battery against a
19 household member by inflicting an injury to that person that is
20 not likely to cause death or great bodily harm, but that does
21 cause painful temporary disfigurement or temporary loss or
22 impairment of the functions of any member or organ of the body,
23 is:

24 (1) for a first offense, guilty of a
25 misdemeanor;

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underscored material = new
[bracketed material] = delete

1 (2) for a second offense against the same
2 victim, guilty of a misdemeanor and, as part of the sentence,
3 shall be imprisoned for a term of at least forty-eight hours
4 that shall not be suspended, deferred or taken under
5 advisement;

6 (3) for a third offense against the same
7 victim, guilty of a misdemeanor and, as part of the sentence,
8 shall be imprisoned for a term of at least thirty days that
9 shall not be suspended, deferred or taken under advisement; or

10 (4) for a fourth or subsequent offense against
11 the same victim, guilty of a fourth degree felony and, as part
12 of the sentence, shall be imprisoned for a term of at least six
13 months that shall not be suspended, deferred or taken under
14 advisement.

15 C. Whoever commits aggravated battery against a
16 household member by inflicting great bodily harm or doing so
17 with a deadly weapon or doing so in any manner whereby great
18 bodily harm or death can be inflicted is guilty of a third
19 degree felony.

20 D. Upon conviction pursuant to this section, an
21 offender shall be required to participate in and complete a
22 domestic violence offender treatment program approved by the
23 children, youth and families department pursuant to rules
24 promulgated by the department that define the criteria for such
25 programs. The requirement imposed pursuant to this subsection

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1 shall not be suspended, deferred or taken under advisement.

2 E. Notwithstanding any provision of law to the
3 contrary, if an offender's sentence was suspended or deferred
4 in whole or in part, the period of probation may extend beyond
5 three hundred sixty-four days but shall not exceed two years.
6 If an offender violates a condition of probation, the court may
7 impose any sentence that the court could originally have
8 imposed and credit shall not be given for time served by the
9 offender on probation; provided that the total period of
10 incarceration shall not exceed three hundred sixty-four days
11 and the combined period of incarceration and probation shall
12 not exceed two years."

13 Section 3. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.

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